



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[EPA-R01-OAR-2012-0430; FRL-9697-2]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Asbestos Management and Control; State of New Hampshire Department of Environmental Services

AGENCY: Environmental Protection Agency (“EPA”).

ACTION: Direct final rule.

SUMMARY: Under the Clean Air Act (“CAA”) and Federal regulations promulgated there under, the New Hampshire Department of Environmental Services (“NH DES”) submitted a request for approval to implement and enforce the readopted and re-codified “Env-Sw 2100: Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981,” and the amended “Env-A 1801-1807.01: Asbestos Management and Control,” (amended Asbestos Management Rules) in place of the National Emission Standard for Asbestos (“Asbestos NESHAP”). EPA has reviewed this request and has determined that the amended Asbestos Management Rules satisfy the requirements necessary for approval. Thus, EPA is hereby granting NH DES the authority to implement and enforce the amended Asbestos Management Rules in place of the Asbestos NESHAP. This approval makes NH DES’s amended Asbestos Management Rules federally enforceable.

DATES: This direct final rule will be effective **[Insert date 60 days from date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[Insert date 60 days from date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2012-0430 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: mcdonnell.ida@epa.gov
3. Fax: (617) 918-0653
4. Mail: "EPA-R01- OAR-2012-0430", Ida E. McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square (mail code OEP05-2), Boston, MA 02109-3912.
5. Hand Delivery or Courier. Deliver your comments to: Ida McDonnell, Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, 5th floor, (OEP05-2), Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's

official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2012-0430. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (“CBI”) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA will forward copies of all submitted comments to the New Hampshire Department of Environmental Services.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted

material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square (OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1656, fax number (617) 918-0656, e-mail lancey.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

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I. Background and Purpose.

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR Part 63, Subpart E. *See* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000). Under these regulations, a state air pollution control agency has the option to request EPA's approval to substitute a state rule for the applicable Federal rule (*e.g.*, the National Emission Standards for Hazardous Air Pollutants). Upon approval by EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule.

The Environmental Protection Agency (EPA) first promulgated standards to regulate asbestos emissions on April 6, 1973 (see 38 FR 8826). These standards have since been amended several times and re-codified in 40 CFR part 61, subpart M, "National Emission Standard for Asbestos" (Asbestos NESHAP). On June 28, 2002, NH DES submitted a partial rule substitution request to implement and enforce its regulation Env-Wm 3900 titled "Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981" (Asbestos Disposal Site Rule) in lieu of some sections of the Asbestos NESHAP as they apply to certain inactive waste disposal sites. On May 28, 2003, EPA approved the Asbestos Disposal Site Rule as a partial rule substitution for the provisions of the Asbestos NESHAP, under section 61.151, which apply to inactive waste disposal sites not operated after July 9, 1981. (*See* 68 FR 31611). On November 15, 2005 and January 10, 2006, respectively, EPA received a request and a supplement from NH DES for a rule adjustment to implement and enforce its regulation Env-A

1800 titled “Asbestos Management and Control” (Asbestos Management and Control Rule) in lieu of the Asbestos NESHAP, except for inactive waste disposal sites not operated after July 9, 1981. On November 28, 2006, EPA approved the Asbestos Management and Control Rule as a rule adjustment for the Asbestos NESHAP, except for inactive waste disposal sites not operated after July 9, 1981.

Under Section 63.91(e)(2), within 90 days of any state amendment, repeal, or revision of any state rule approved as an alternative to a Federal requirement, the state must provide EPA with a copy of the revised authorities and request approval of the revised rule. In a letter dated January 28, 2010, NH DES requested approval of its readopted rules pertaining to inactive waste disposal sites in New Hampshire. Specifically, NH DES requested that EPA approve its readopted and re-codified rules in Env-Sw 2100 titled “Management and Control of Asbestos Sites Not Operated After July 9, 1981” (amended Asbestos Disposal Site Rule). On April 1, 2010, EPA determined that NH’s submittal was complete. In a letter dated February 25, 2011, supplemented on September 16, 2011 and October 20, 2011, NH DES requested approval of its amended rules pertaining to asbestos management in New Hampshire. Specifically, NH DES requested approval of its amended rules in Env-A 1800 titled “Asbestos Management and Control”, effective October 21, 2008, Sections 1801-1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07-1802.09, 1802.13, 1802.15-1802.17, 1802.28-1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05-1804.09, and 1807.02 (amended Asbestos Management and Control Rule). On November 16, 2011, EPA determined that NH’s submittal was complete.

As explained below, EPA has reviewed the State's submissions and determined that the amended Asbestos Disposal Site Rule and the amended Asbestos Management and Control Rule are no less stringent than the provisions of the Asbestos NESHAP. EPA is therefore approving NH DES's requests to implement and enforce its readopted and re-codified rules in Env-Sw 2100, "Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981," as a partial rule substitution for the same provisions of 40 CFR 61.01 through 40 CFR 61.18 and 40 CFR 61.151 that were substituted by the predecessor rule Env-Wm 3900 on May 28, 2003. EPA is also approving NH DES's request to implement and enforce its amended rules in Env-A 1800, "Asbestos Management and Control", effective October 21, 2008, Sections 1801-1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07-1802.09, 1802.13, 1802.15-1802.17, 1802.28-1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05-1804.09, and 1807.02, as a rule adjustment for the Asbestos NESHAP, except inactive waste disposal sites not operated after July 9, 1981.

In addition, in the Federal Register on May 13, 2009, EPA corrected a sequential numbering error in 40 CFR 63.99. *See* 74 FR 22437. In this rulemaking, paragraph (a)(29) of section 63.99, the subparagraph for the state of New Hampshire, was redesignated as paragraph (a)(30). However, the references to paragraph (a)(29) in the incorporation by reference section 63.14(d)(5)(i) and (ii) were not corrected to refer to paragraph (a)(30) at that time. Therefore, today's notice also corrects the references in 40 CFR 63.14(d)(5) to appropriately refer to paragraph (a)(30).

II. What Requirements Must a State Rule Meet to Substitute or Adjust a Section 112 Rule?

A state must demonstrate that it has satisfied the general delegation/approval criteria contained in 40 CFR 63.91(d). The process of providing “up-front approval” assures that a state has met the delegation criteria in Section 112(l)(5) of the CAA (as codified in 40 CFR 63.91(d)), that is, that the state has demonstrated that its NESHAP program contains adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. Under 40 CFR 63.91(d) (3), interim or final Title V program approval satisfies the criteria set forth in 40 CFR 63.91(d) for “up-front approval.” On September 24, 2001, EPA promulgated full approval of NH DES’s operating permits program. *See* 66 FR 48806. Accordingly, NH DES has satisfied the up-front approval criteria of 40 CFR 63.91(d).

Additionally, the “rule substitution” and “rule adjustment” options require EPA to make a detailed and thorough evaluation of the state’s submittal to ensure that it meets the stringency and other requirements of 40 CFR 63.93 and 40 CFR 63.92, respectively. A rule will be approved as a substitute if the state or local government demonstrates: (1) the state and local rules contain applicability criteria that are no less stringent than the corresponding Federal rule; (2) the state and local rule requires levels of control and compliance and enforcement measures that would achieve emission reductions from each affected source that are no less stringent than would result from the otherwise applicable Federal standard; (3) the schedule for implementation

and compliance is consistent with the deadlines established in the otherwise applicable Federal rule; and (4) the state requirements include additional compliance and enforcement measures as specified in 40 CFR 63.93(b)(4). *See* 40 CFR 63.93(b). A rule will be approved as an adjustment if the state or local government demonstrates: (1) the public within the state has had adequate notice and opportunity to submit written comments on the state requirements; and (2) that each state adjustment to the Federal rule individually results in requirements that are unequivocally no less stringent than the applicable Federal rule regarding applicability and level of control and compliance and enforcement measures for each affected source and emission point and assure compliance by every affected source no later than would be required by the Federal rule. *See* 40 CFR 63.92(b).

After reviewing NH DES's amended Asbestos Management Rules and equivalency demonstrations for the Asbestos NESHAP, as the rules apply to sources in New Hampshire, EPA has determined these requests meet all the requirements necessary for approval under CAA section 112(l) and 40 CFR 63.91, 63.92 and 63.93.

III. How Will EPA Determine Equivalency for State Alternative NESHAP Requirements?

Before we can approve alternative requirements in place of a part 63 emissions standard, the state must submit to us detailed information that demonstrates how the alternative requirements compare with the otherwise applicable Federal standard. Under 40 CFR part 63 subpart E, the level of control in the state rule must be at least as stringent as the level of control

in the Federal rule. For a rule adjustment, each adjustment taken individually must be no less stringent than the corresponding requirement in our standard. In addition, in order for equivalency to be granted for a rule substitution, the level of control and compliance and enforcement measures (monitoring, reporting and recordkeeping (“MRR”)) of the state rule, taken together as a whole, must be equivalent to the level of control and MRR of the Federal rule, taken together as a whole. A detailed discussion of how EPA will determine equivalency under the rule substitution option for state alternative NESHAP requirements is provided in the preamble to EPA’s proposed Subpart E amendments on January 12, 1999. *See* 64 FR 1908.

IV. What Changes did NH make to its Asbestos Disposal Site Rule?

The NH DES recently completed the process of readopting expiring administrative rules pertaining to management of certain inactive asbestos sites in New Hampshire. These rules, known as the Asbestos Disposal Site Rule, had been previously approved by the EPA in 2003, under the provisions of 40 CFR 63.93, as a substitute for certain requirements in the Asbestos NESHAP (*see* 68 FR 31611, May 28, 2003). The Asbestos Disposal Site Rule, originally codified as Env-Wm 3900, became re-designated editorially in 2008, with a new subtitle, as Env-Sw 2100, pursuant to a state approved reorganization plan for NH DES rules. The Env-Sw 2100 rules were set to expire on February 16, 2010. On January 26, 2010, with an effective date of February 16, 2010, NH readopted the Env-Sw 2100 rules with minor amendments (amended Asbestos Disposal Site Rule). No substantive changes were made to the rules. The changes to the regulations include the following: 1) In 2005, NH DES enacted

legislation to transfer the portions of the asbestos control program that had been at the NH Department of Health and Human Services (DHHS) to NH DES. In the amended Asbestos Disposal Site Rule, references to DHHS were updated accordingly; and 2) In 2008, NH DES consolidated the former DHHS rules into Env-A 1800 from He-P 5000. In the amended Asbestos Disposal Site Rule, references to He-P 5000 were updated accordingly.

V. What Changes did NH make to its Asbestos Management and Control Rule?

On October 28, 2008, NH DES readopted the Asbestos Management and Control Rule Env-A 1800 (amended Asbestos Management and Control Rule) and incorporated the state's asbestos licensing rules, which were previously codified in He-P 5000. NH DES is not requesting approval of the amended sections of Env-A 1800 which incorporate the asbestos licensing rules and are unrelated to the Asbestos NESHAP. In readopting Env-A 1800, NH DES also made some changes to Env-A 1800 editorial in nature, intended to clarify rather than substantially amend the Asbestos Management and Control Rule. As in the original approved rule, the amended Asbestos Management and Control Rule continues to incorporate most, but not all, of the Asbestos NESHAP into Section 1807.01. The only changes to the Asbestos NESHAP incorporation by reference section 1807.01 are the following: 1) NH revised the reference to the NH Statute; 2) NH updated the incorporation by reference date to the version of the Asbestos NESHAP rule in the July 2007 Code of Federal Regulations; and 3) NH changed the term "owner/operator" to the acronym "O/O". The November 28, 2006 Federal Register

Notice contains a more detailed discussion of the differences between the Asbestos Management and Control Rule and the Asbestos NESHAP.

VI. What is EPA's Action Regarding NH DES's amended Asbestos Management Rules?

After reviewing the request for approval of NH DES's amended Asbestos Disposal Site Rule, and NH DES's amended Asbestos Management and Control rule, EPA has determined that these requests meet all of the requirements necessary to qualify for partial rule substitution approval and rule adjustment approval under CAA section 112(l) and 40 CFR 63.91, 63.92, and 63.93. EPA has determined that NH DES's amended Asbestos Disposal Site Rule is equivalent to or not less stringent than the Asbestos NESHAP, as it applies to inactive waste disposal sites not operated after July 9, 1981. EPA has also determined that NH DES's amended Asbestos Management and Control Rule is equivalent to or not less stringent than the Asbestos NESHAP, as it applies to sources except for inactive waste disposal sites not operated after July 9, 1981. Therefore, EPA hereby approves NH DES's amended Asbestos Management Rules to be used in place of the Asbestos NESHAP. As of the effective date of this action, NH DES's amended Asbestos Disposal Site Rule and NH DES's amended Asbestos Management and Control Rule are enforceable by the EPA and citizens under the CAA. Although NH DES has primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112.

VII. FINAL ACTION

The EPA is approving NH's readopted and re-codified rules in Env-Sw 2100, "Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981," effective as of February 16, 2010, as a partial rule substitution for the Asbestos NESHAP, as it applies to those inactive waste disposal sites not operating after July 9, 1981, that are subject to 40 CFR 61.151 in New Hampshire. The EPA is also approving NH DES's amended rules in Env-A 1800, "Asbestos Management and Control", effective October 21, 2008, Sections 1801-1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07-1802.09, 1802.13, 1802.15-1802.17, 1802.28-1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05-1804.09, and 1807.02, as a rule adjustment for the Asbestos NESHAP except for inactive waste disposal sites not operating after July 9, 1981. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the rule revision should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days from date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the direct final rule and informing the public that the direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule.

The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VIII. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.” This section also provides a mechanism for us to convene a proceeding for reconsideration, “[i]f the person raising an

objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Regional Administrator, U.S.

Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, (ORA 01-4), Boston, MA 02109-3912, with a copy to the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Regional Counsel, U.S.

Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, (ORA 18-1), Boston, MA 02109-3912. Filing a petition for reconsideration by the Administrator of this final rule under CAA section 307(d)(7)(B) does not affect the finality of this rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of the rule.

IX. Statutory and Executive Order Reviews.

A. Executive Order 12866: Regulatory Planning and Review

This action approves equivalent state requirements in place of Federal requirements under CAA section 112(l). This type of action is exempt from review under EO 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This action allows the state of New Hampshire to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to certain asbestos-emitting activities. Thus, this action does not require any person to submit information.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that meets the Small Business Administration size standards found at 13 CFR 121.201, (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not

have a significant impact on a substantial number of small entities because approvals under CAA section 112(l) and 40 CFR 63.92 and 40 CFR 63.93 do not create any new requirements. Such approvals simply allow a state to implement and enforce equivalent requirements in place of the Federal requirements that EPA is already imposing.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action allows the state of New Hampshire to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to certain asbestos-emitting activities. Thus, this action does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on

the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action simply allows New Hampshire to implement equivalent alternative requirements to replace a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Government

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action allows the state of New Hampshire to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to certain asbestos-emitting activities. This action will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it approves a state program such that it allows the state

of New Hampshire to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to certain asbestos-emitting activities.

H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action allows the state of New Hampshire to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to certain asbestos-emitting activities. The state requirements contain standards that are at least equivalent to the federal standards; thus, we anticipate only a positive impact from this action.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

List of Subjects in 40 CFR Parts 61 and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and record keeping requirements.

AUTHORITY: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

December 19, 2012
Dated:

Ira Leighton,
Acting Regional Administrator,
EPA-New England

Therefore, 40 CFR parts 61 and 63 are amended as follows:

**PART 61--NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS**

1. The authority citation for parts 61 and part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A – General Provisions

2. Section 61.04 is amended by revising paragraph (c)(1) to read as follows:

§ 61.04 Address.

(c)* * *

(1) (i) Inactive waste disposal sites not operated after July 9, 1981 within the state of New Hampshire must comply with the New Hampshire Regulations at Env-Sw 2100:

Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective February 16, 2010 (incorporated by reference, see § 61.18).

(ii) The remainder of the sources subject to the Part 61 Subpart M Asbestos provisions, except for those listed under paragraph (c)(1)(i) of this section, must comply with the New Hampshire Regulations at Env-A 1800, Asbestos Management and Control, effective October 21, 2008, Sections 1801-1807, excluding the following provisions:

1801.02(e), 1802.02, 1802.04, 1802.07-1802.09, 1802.13, 1802.15-1802.17, 1802.28-1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05-1804.09, and 1807.02 (incorporated by reference, see § 61.18).

* * * * *

3. Section 61.18 is amended by revising paragraph (e)(1) to read as follows:

§ 61.18 Incorporation by reference.

* * * * *

(e) *State and Local Requirements.* The following materials listed below are available at the Air and Radiation Docket and Information Center, 1200 Pennsylvania Avenue, NW., Washington , DC 20460, telephone number (202) 566-1745.

(1) (i) New Hampshire Regulations at Env-Sw 2100, Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective February 16, 2010 (including a letter from Thomas S. Burack, Commissioner, Department of Environmental Services, State of New Hampshire, to Carol J. Holahan, Director, Office of Legislative Services, dated February 12, 2010, certifying that the enclosed rule, Env-Sw 2100, is the official version of this rule). Incorporation By Reference approved for § 61.04(c).

(ii) New Hampshire Regulations at Env-A 1800, Asbestos Management and Control, effective October 21, 2008, Sections 1801-1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07-1802.09, 1802.13, 1802.15-1802.17, 1802.28-1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05-1804.09, 1807.02 (including a letter from Thomas S. Burack, Commissioner, Department of Environmental Services, State of New Hampshire, to Carol J. Holahan, Director, Office of Legislative

Services, dated November 14, 2008, certifying that the enclosed rule, Env-A 1800, is the official version of this rule). Incorporation By Reference approved for § 61.04(c).

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PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

Subpart A –General Provisions

4. Section 63.14 is amended by revising paragraph (d)(5) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(d)* * *

(5) (i) New Hampshire Regulations at Env-Sw 2100, Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective February 16, 2010 (including a letter from Thomas S. Burack, Commissioner, Department of Environmental Services, State of New Hampshire, to Carol J. Holahan, Director, Office of Legislative Services, dated February 12, 2010, certifying that the enclosed rule, Env-Sw 2100, is the official version of this rule). Incorporation By Reference approved for § 63.99(a).

(ii) New Hampshire Regulations at Env-A 1800, Asbestos Management and Control, effective October 21, 2008, Sections 1801-1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07-1802.09, 1802.13, 1802.15-1802.17, 1802.28-

1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05-1804.09, 1807.02

(including a letter from Thomas S. Burack, Commissioner, Department of Environmental Services, State of New Hampshire, to Carol J. Holahan, Director, Office of Legislative Services, dated November 14, 2008, certifying that the enclosed rule, Env-A 1800, is the official version of this rule). Incorporation By Reference approved for § 63.99(a).

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Subpart E—Approval of State Programs and Delegation of Federal Authorities

5. Section 63.99 is amended by revising paragraphs (a)(30)(iii) and (iv) to read as follows:

§ 63.99 Delegated Federal authorities.

(a)* * *

(30) * * *

(iii) Affected inactive waste disposal sites not operated after July 9, 1981 within New Hampshire must comply with New Hampshire Regulations Applicable to Hazardous Air Pollutants (incorporated by reference as specified in § 63.14(d)) as described in paragraph (a)(30)(iii)(A) of this section:

(A) The material incorporated into the New Hampshire Regulations at Env-Sw 2100: Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective February 16, 2010, pertaining to inactive waste disposal sites not operated after July 9, 1981 in the State of New Hampshire's

jurisdiction, and has been approved under the procedures in 40 CFR Part 63.93 to be implemented and enforced in place of the Federal NESHAPs for Inactive Waste Disposal Sites (40 CFR 61.151).

(B) [RESERVED]

(iv) Affected asbestos facilities (i.e., facilities found under 40 CFR Part 61, subpart M, except those listed under paragraph (a)(30)(iii) of this section) must comply with New Hampshire Regulations Applicable to Hazardous Air Pollutants (incorporated by reference as specified in § 63.14(d)) as described in paragraph (a)(30)(iv)(A) of this section:

(A) The material incorporated into the New Hampshire Regulations at Env-A 1800, Asbestos Management and Control, effective October 21, 2008, Sections 1801-1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07-1802.09, 1802.13, 1802.15-1802.17, 1802.28-1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05-1804.09, and 1807.02, pertaining to those affected sources in the State of New Hampshire's jurisdiction, and has been approved under the procedures in 40 CFR 63.92 to be implemented and enforced in place of the federal NESHAPs found at 40 CFR part 61, subpart M (except those listed under paragraph (a)(30)(iii) of this section).

(B) [RESERVED]

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